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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,873

12/02/2003

Thomas Stanley Seay

177-2

2746

22653 7590 12/27/2010  
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EXAMINER

HUYNH, NAM TRUNG

ART UNIT

PAPER NUMBER

2617

NOTIFICATION DATE

DELIVERY MODE

12/27/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ecallan1@san.rr.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/725,873	<b>Applicant(s)</b> SEAY, THOMAS STANLEY	
	<b>Examiner</b> NAM HUYNH	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27,34,36 and 48-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-27,34,48 and 49 is/are allowed.
- 6) ☒ Claim(s) 36,50 and 51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

This office action is in response to amendment filed on 7/26/10. Claims 1, 3, 4, 5, 12, 13, 21, 22, 24, 34, and 48 have been amended, claims 35 has been cancelled, and claims 48-51 have been added.

### ***Election/Restrictions***

1. This application contains claims 37-40 drawn to an invention nonelected with traverse in the reply filed on 12/30/09. A complete reply to the non-final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 50 and 51 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 50 and 51 pertain to a computer readable storage medium, however there is no definition of a computer readable medium in the specification. The broadest reasonable interpretation of a computer readable medium encompasses transitory mediums (i.e. carrier waves) which

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are non-statutory. The Examiner suggests amending the claims to recite "A **non-transitory** computer readable storage medium..."

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bousquet (US 6,438,142) in view of Kosaka (US 2004/0048609).

Bousquet teaches a relay terminal (satellite) for relaying communications from originator user terminals to identified destination user terminals (mobile access network allows communications between originator and destination terminals) (column 1, lines 9-13), comprising:

means for applying frequency-hopping patterns to said received communication signals for said relay of said communications signals (TDMA transmission method

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employing a plurality of carrier frequencies accessible selectively in receivers by frequency hopping);

wherein respectively different frequency-hopping patterns are applied to signaling data (first set of carrier frequencies/frequencies 21-1 and 21-2) and payload segments (second set of carrier frequencies/frequencies 21-3 to 21-N) of a given said relayed communication signal (the first set of carrier frequencies (21-1 and 21-2) and second set of carrier frequencies (21-3 to 21-N) are considered different frequency hopping patterns because they use different frequencies).

The invention of Bousquet teaches that the first set of carrier frequencies, or first frequency hopping pattern is applied to signaling data, however, Bousquet does not explicitly teach that the signaling data comprises acquisition and identification segments. Kosaka discloses a radio communication system (title). Kosaka teaches that the frame structure in the TDMA wireless communication system comprises a preamble and a data payload. The preamble identifies the signal (identification segment) and control information to achieve synchronization (acquisition segment) (paragraph 7). Thus the preamble of Kosaka falls in line with the signaling data of Bousquet. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the signaling data of Bousquet to include identification and acquisition information, as taught by Kosaka, in order to synchronize and control the frame for proper reception.

***Allowable Subject Matter***

6. Claims 1-27, 34, 48, and 49 are allowed.
7. Claims 50 and 51 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101 set forth in this Office action.

***Response to Arguments***

8. Applicant's argument with respect to claim 36 has been considered but is moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAM HUYNH whose telephone number is (571)272-5970. The examiner can normally be reached on 8 a.m.-5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George Eng/  
Supervisory Patent Examiner, Art Unit 2617

/Nam Huynh/  
Examiner, Art Unit 2617